IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.512 OF 2003

IN

SUMMARY SUIT NO.449 OF 2003

Hutchison Max Telecom Pvt.Ltd .. Plaintiff

versus

Balwas e-Com India Ltd .. Defendant

...

Ms.Vandana Gupte i/b Dholakia Gupte for Plaintiff.

None for Defendant

CORAM : D.G. KARNIK, J

DATED : 16th February, 2005.

P.C:-

1. Heard learned counsel for the plaintiff. None for the defendant. Learned counsel for the plaintiff hands in the affidavit of service and also the original documents along with a list. The affidavit of service is taken on record. The documents filed under the compilation are also taken on record and collectively marked A.

2. Despite service of the Summons for Judgment the defendant has not filed an application for leave to defend nor has it filed any affidavit in reply. In the circumstances the averments made in the plaint are deemed to be admitted and the plaintiff is entitled to a decree under clause (a) of sub rule 6 of Rule 3 of Order 37 of the Code of Civil Procedure.

3. A perusal of the documents filed by the plaintiff shows that the defendant entered into a written contract for use of cell-phone facility by signing the application form. On the reverse of the application form the terms and conditions are printed which include charging of interest. The plaintiff sent to the defendant bills from time to time. Copies of bills are filed on record. As the defendant has not filed any affidavit in reply denying the amount of the bills they are presumed to be correct.

4. Summons for Judgment is made absolute and the suit of the plaintiff is decreed as per prayer clause in the plaint, except as to the future interest. The defendant shall also pay interest on the decretal amount from the date of the suit till payment at 9 % p.a.

D.G.KARNIK, J